

**Senate Bill No. 2043**

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Passed the Senate      August 25, 2000

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*Secretary of the Senate*

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Passed the Assembly      August 21, 2000

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2000, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

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## CHAPTER \_\_\_\_\_

An act to amend Sections 316.1 and 366.23 of the Welfare and Institutions Code, relating to minors.

## LEGISLATIVE COUNSEL'S DIGEST

SB 2043, Schiff. Termination of parental rights: notice.

Existing law requires the juvenile court to direct that the fathers, presumed and alleged, the mother of the minor, and the minor, if he or she is at least 10 years of age, be notified of the time and place of proceedings to terminate parental rights, and be advised that they may appear at those hearings. Existing law specifies the manner in which this notice may be given.

This bill would revise and recast the procedures for providing notice to the parent or guardian of a child, and any other person entitled to receive notice, regarding hearings to terminate parental rights. Among other things, the bill would specifically require child welfare agencies to carry out these duties, as specified. The bill would also revise the requirements for providing notice. The bill would make related changes regarding the designation of the parent or guardian's current address and authorize the Judicial Council to develop a form for these purposes, as specified. By imposing additional duties upon local child welfare agencies, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs



mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

*The people of the State of California do enact as follows:*

SECTION 1. Section 316.1 of the Welfare and Institutions Code is amended to read:

316.1. (a) Upon his or her appearance before the court, each parent or guardian shall designate for the court his or her permanent mailing address by executing and filing with the court a completed Judicial Council form for notification of mailing address. The court shall advise each parent or guardian that the designated mailing address will be used by the court for notice purposes unless and until the parent or guardian notifies the court or the child welfare agency of a new mailing address by executing and filing a completed Judicial Council form for notification of change of address. However, the child welfare agency shall use the last known mailing address for notice purposes regardless of whether it has been designated on the Judicial Council form or not. The court shall further advise each parent or guardian that his or her failure to designate a current mailing address may result in proceedings being held in the parent's or guardian's absence with potential adverse consequences including termination of parental rights.

(b) The Judicial Council may develop a form for the designation of a permanent mailing address and a form for a change of a mailing address to be completed by the parent or guardian designating a permanent mailing address or the change of his or her address.

SEC. 2. Section 366.23 of the Welfare and Institutions Code is amended to read:

366.23. (a) Whenever a juvenile court schedules a hearing pursuant to Section 366.26 regarding a child, it shall direct that the fathers, presumed and alleged, and mother of the child, the child, if 10 years of age or older, and any counsel of record shall be notified of the time and place of the proceedings and advised that they may appear. The notice shall also advise them of the right to

counsel, the nature of the proceedings, and of the requirement that at the proceedings the court shall select and implement a plan of adoption, legal guardianship, or long-term foster care for the child. In all cases where a parent has relinquished his or her child for the purpose of adoption, no notice need be given to that parent.

(b) Notice to the parent or guardian of the Section 366.26 hearing shall be provided as follows:

(1) If the parent or guardian is present at the hearing at which the court schedules a hearing pursuant to Section 366.26, notice shall be proper if: (A) the court advises the parent or guardian of the time and place of the proceedings and of the requirement that, at the proceedings, the court shall select and implement a plan of adoption, legal guardianship, or long-term foster care for the child, and order the parent or guardian to appear for the proceedings and (B) the child welfare agency serves notice by first-class mail to the last known mailing address of the parent or guardian not more than 30 days nor less than 20 days prior to the hearing, which includes an advisement that the hearing pursuant to Section 366.26 may result in termination of parental rights. If the requirements of this paragraph are met, notwithstanding any other provision of this section, no additional notice to that parent or guardian regarding the hearing held pursuant to Section 366.26 or any continuation thereof, except as set forth in subdivision (g) shall be required.

(2) When the child welfare agency is recommending adoption and is serving notice to a parent or guardian, the notice required in subdivision (a) shall be served by certified mail, return receipt requested, to the parent's or guardian's last known mailing address. This notice shall be mailed not less than 75 days before the date of the hearing. Notice shall be sufficient if the child welfare agency receives a return receipt signed by the parent or guardian. If the child welfare agency receives a return receipt signed by someone other than the parent or guardian, or the child welfare agency does not receive a return receipt within fifteen days of the mailing, it shall deem the whereabouts of the parent or guardian to be



unknown and shall proceed according to the provisions of paragraph (3) or (4), as applicable.

(3) When the child welfare agency is recommending adoption and is serving notice to a parent or guardian who is represented at the hearing by an attorney and the whereabouts of that parent or guardian are unknown, the notice required in subdivision (a) may be accomplished as follows:

(A) The social worker shall file an affidavit with the court not more than 150 days prior to the date of the Section 366.26 hearing, stating the name of the mother and fathers, presumed or alleged, or guardian and shall set forth the efforts that have been made to locate the parents or guardian. If in the process of conducting those efforts one or more addresses are found for the parent or guardian, then service may be accomplished by sending notice by first-class mail to each address and by sending notice by first-class mail addressed to the parent or guardian in care of the parent's or guardian's attorney of record at least 30 days before the date of the hearing.

(B) If no address for a parent or guardian is found, upon receipt of the affidavit, the court may make a finding that the child welfare agency has made sufficient efforts to attempt to locate the parent or guardian and may direct that service shall be accomplished by publication as set forth in subparagraph (B) of paragraph (4), or by substituted service upon the parent or guardian by sending notice by first-class mail addressed to the parent or guardian in care of the parent's or guardian's attorney of record at least 30 days before the date of the hearing.

(4) When the child welfare agency is recommending adoption and is serving notice to a parent or guardian who is not represented at the hearing by an attorney and whose whereabouts are unknown, the notice required in subdivision (a) may be accomplished as follows:

(A) The social worker shall file an affidavit with the court not more than 150 days prior to the date of the Section 366.26 hearing, stating the name of the mother and fathers, presumed or alleged, or guardian, and their



place of residence, if known. This affidavit shall set forth the efforts that have been made to locate and serve the parents or guardian. If in the process of conducting those efforts one or more addresses are found for the parent or guardian, then service may be accomplished by sending notice by first-class mail to each address at least 30 days before the date of the hearing.

(B) If no address for a parent or guardian is found and, upon receipt of the affidavit, the court determines that the social worker has exercised due diligence in attempting to locate the parents or guardian not more than 150 days prior to the date of the Section 366.26 hearing, the court shall order that service shall be by publication in a newspaper of general circulation once a week for four successive weeks completed not more than 30 nor less than 10 days prior to the scheduled Section 366.26 hearing. For purposes of this section, publication of the notice is not required to be pursuant to a contract executed pursuant to the provisions of Article 6 (commencing with Section 25480) of Division 2 of Title 3 of, and Section 25502 of, the Government Code and publication of the notice shall be exempt from those provisions. If the address of the parent or guardian becomes known during the publication period, notice shall be served immediately by first-class mail.

(5) When the child welfare agency is serving a parent or guardian and the child welfare agency is recommending guardianship or long-term foster care, the notice required in subdivision (a) shall be sent by first-class mail to the parent's or guardian's last known address and completed not more than 30 days nor less than 20 days prior to the hearing. If the whereabouts of the parent or guardian are unknown, the social worker shall file an affidavit with the court not more than 150 days prior to the date of the hearing, stating the name of the mother and fathers, presumed or alleged, or guardian and their place of residence, if known. This affidavit shall set forth the efforts that have been made to locate and serve the parents or guardian. If the court determines that the social worker has exercised due diligence in attempting

to locate the parents or guardian not more than 150 days prior to the date of the Section 366.26 hearing, no further efforts to locate and serve the parents or guardian shall be required. If the address of the parents or guardian becomes known, notice shall immediately be served by first-class mail.

(c) In any case where the address of the parent or guardian becomes known within 10 days of the hearing pursuant to Section 366.26, the child welfare agency shall serve notice immediately by overnight mail,.

(d) Where the child welfare agency is serving an attorney or an unrepresented person entitled to notice under subdivision (a) other than a parent or guardian, regardless of whether the local child welfare agency is recommending adoption, guardianship, or long-term foster care, the notice required in subdivision (a) shall be sent by first-class mail to the attorney's or the unrepresented person's last known mailing address and that notice shall be completed not more than 30 days nor less than 20 days prior to the hearing.

(e) If the court determines that there has been due diligence in attempting to locate and serve the parent or guardian and if the petitioner is serving the parent or guardian pursuant to paragraph (3), (4), or (5) of subdivision (b), or subdivision (c), the court also shall order that notice be given to the grandparents of the child, if there are any and if their residence and relationship to the child are known, by first-class mail, completed not more than 30 days nor less than 20 days prior to the hearing, of the time and place of the proceeding and that they may appear.

(f) Notice to the child, if 10 years of age or older, of the hearing shall be by first-class mail, completed not more than 30 days nor less than 20 days prior to the hearing.

(g) In any case in which the child welfare agency has a last known address for a parent or guardian and the parent or guardian does not appear at the hearing pursuant to Section 366.26 and the hearing is continued, the child welfare agency shall send notice of the new time and place of the proceedings and other information



required in subdivision (a) to the parent or guardian by first-class mail if the original notice is deemed proper by the court, and if not, by the same means as the original notice was required to be served. In all other cases, regardless of the type of notice required, once the court has made the initial finding that notice is proper to any parent, guardian, or any person entitled to receive notice pursuant to this section, no further notice is required for any continuation of a Section 366.26 hearing. However, if the court has selected and implemented a plan of adoption, legal guardianship, or long-term foster care for the child at the Section 366.26 hearing and thereafter a new Section 366.26 hearing is set, or the recommendation changes from the recommendation contained in the notice previously found to be proper, notice shall be provided to any parent, guardian, and any person entitled to receive notice pursuant to this section regarding that subsequent hearing.

(h) If the child welfare agency provides personal service where only certified mail or first-class mail is required, or otherwise provides a higher form of notice than is required, the person receiving the higher form of notice is properly noticed.

(i) For purposes of this section, notice is completed upon the date of the last publication, where notice is published, or, when notice is provided by first-class mail, five days after mailing if mailing is to an address within the state, 10 days if mailing is to an address outside the state, and 20 days if mailing is to an address outside the United States.

(j) Notwithstanding subdivisions (a) and (b) of this section and Section 7666 of the Family Code, the juvenile court shall order that no notice of the hearing under Section 366.26 be provided to all of the following:

(1) A mother or presumed father who has relinquished the child to the State Department of Social Services or to a licensed adoption agency for adoption, and the relinquishment has been accepted and filed with notice as required under Section 8700 of the Family Code.





(2) An alleged father who has denied paternity and has executed Section 1 of Judicial Council form Paternity-Waiver of Rights (JV-505) waiving notice of further hearings.

(3) An alleged father who has relinquished the child to the department or to a licensed adoption agency for adoption, and the relinquishment has been accepted and filed with notice as required under Section 8700 of the Family Code.

(k) This section shall also apply to minors adjudged wards pursuant to Section 727.31.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Approved \_\_\_\_\_, 2000

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*Governor*

